



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 28, 1996

Ms. Betsy Elam  
Fielding, Barrett & Taylor, P.C.  
3400 Bank One Tower  
500 Throckmorton Street  
Fort Worth, Texas 76102-3821

OR96-1045

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37890.

The City of Burleson (the "city"), which you represent, received a request for information concerning a diving board in use on June 9, 1995 at the Chisenhall Park Community Center swimming pool. You assert that the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney, and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. You have submitted to this office a letter from an attorney representing a party allegedly injured on the diving board on June 9, 1995. The attorney's letter indicated that he is making a claim under the TTCA against the city for his client's injuries. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the letter you received satisfies the requirements of the TTCA.

We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the city has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).<sup>1</sup>

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since section 552.103(a) is a discretionary exception, Open Records Decision No. 542 (1990) at 4, the city could choose to release the information at this time. Gov't Code §552.007.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a large, sweeping initial "T" and a long horizontal stroke extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref: ID# 37890

Enclosures: Submitted documents

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<sup>1</sup>We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA.

<sup>2</sup>We note, however, that several documents reveal the home addresses, home telephone numbers, and social security numbers of government employees, as well as information which reveals whether these employees have family members. If these employees have made the election under section 552.024 that this information be kept confidential, the city may not release that information under section 552.117 of the Government Code.

cc: Mr. Geoffrey M. Tait  
Cat's-Eye Intelligence Service  
P.O. Box 473  
Euless, Texas 76039-0473  
(w/o enclosures)